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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. DERICK ANTWON HUTCHINSON, Defendant and Appellant.	H034771 (Santa Clara County Super.Ct.No. CC807252)

Defendant Derick Antwon Hutchinson pleaded no contest to two counts of robbery and admitted the allegation as to one of the robbery counts that he personally used a firearm in the commission of the offense. He was sentenced to a 12-year prison term.

Defendant asserts that the court erred in calculating the amount of presentence custody credits. The court calculated that defendant was entitled to 151 days of credits; it did so by determining that defendant completed serving his sentence in an unrelated case (Docket No. CC649420; the prior case) on December 3, 2008, and used December 4, 2008, as the beginning of defendant's confinement to calculate the credits in the present case. Defendant contends that this was error, because the court, in determining the date defendant completed serving the sentence in the prior case, failed to calculate postsentence worktime credits on a one-for-one basis. He claims that he is entitled to an additional 91 days. We reject that challenge. It appears, however, that the court's

determination of the date defendant completed serving his sentence in the prior case is inaccurate. We will therefore reverse the judgment and remand the matter to the trial court for the limited purpose of recalculating presentence custody credits in the present case after redetermining the date upon which defendant completed serving his sentence in the prior case.

FACTS[1]

On November 18, 2007, defendant robbed an individual, Nemecio Lamas, of his keys, wallet, and money ($4). On the same day, he robbed a second victim, Olrio Reywaga, of his wallet and cash of $40 to $50. Defendant admitted personally using a firearm in connection with the robbery of Lamas.

PROCEDURAL BACKGROUND

Defendant was charged by complaint filed June 2, 2008, with six felonies, namely, two counts of kidnapping to commit robbery (Pen. Code, § 209, subd. (b)(1); counts 1 and 2),[2] two counts of carjacking (§ 215; counts 3 and 4), and two counts of second degree robbery (§§ 211-212.5, subd. (c); counts 5 and 6). The complaint contained further allegations that defendant personally used a firearm in the commission of each of the six offenses charged. On February 19, 2009, defendant entered a plea of nolo contendere (no contest) to two counts of second degree robbery (counts 5 and 6). He also admitted the firearm allegation as to count 5. He did so with the understanding that he would receive a prison sentence of not less than, and no more than, 12 years; and the remaining counts and enhancements would be dismissed. Before accepting the plea, defendant was apprised fully of the rights he was giving up as a result of his no contest

[1] The record contains no details concerning the underlying offenses. To the extent any facts concerning the offenses to which defendant pleaded no contest can be gleaned from the complaint, reporter's transcript, and probation report, they are presented here.

[2] Further statutory references are to the Penal Code unless otherwise stated.

plea and concerning the consequences of that plea. Counsel stipulated that there was a factual basis for the plea, and the court found the existence of such a factual basis.

On April 14, 2009, the court sentenced defendant to the low term of two years in prison for the count 5 conviction, together with a 10-year term for the firearm enhancement, for a total prison term of 12 years. The court also imposed a concurrent sentence of two years for the count 6 conviction. The court held further that defendant was entitled to a total of 151 days' custody credits. The court dismissed counts 1 through 4, as well as the remaining firearm allegations. Upon this court's granting of his application for relief from default for failure to file a timely appeal, defendant filed a notice of appeal based upon the sentence or other matters occurring after the plea.

DISCUSSION

I. *Calculation of Presentence Custody Credits*

A. *Background*

At the time of sentencing, defense counsel argued that his client was entitled to presentence custody credits of 314 actual days, calculated from June 5, 2008, to April 14, 2009 (the date of sentencing). Counsel admitted that when defendant was remanded for custody in this case on June 5, 2008, he was already serving a sentence in another matter. The prosecution argued that because defendant was already serving a prison sentence in the prior case, and he did not complete serving that sentence until December 3, 2008, defendant's credits in this case should be calculated from December 4, 2008. The court agreed, and ordered that defendant receive credits of 132 actual days, plus 19 additional days pursuant to section 2933.1.[3]

[3] Pursuant to section 2933.1, subdivision (a) "any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit . . . ." As robbery is such an enumerated offense (§ 667.5, subd. (c)(9)), defendant was limited to receiving no more than 15 percent of worktime credit.

Defendant argues on appeal[4] that the custody credits in the present case were miscalculated because the court erred in its determination of the date defendant completed serving his sentence in the prior case. He contends that, although he was never actually delivered into the custody of the California Department of Corrections and Rehabilitation (formerly, the Department of Corrections; CDCR), after sentencing in the prior case, he was in the CDCR's constructive custody and accordingly was entitled to good time credit on a one-for-one basis pursuant to section 2933. After the revocation of his parole on May 29, 2008, defendant was sentenced to a 16-month prison term with 271 days' credit in the prior case. Based upon a recalculation of the service of defendant's sentence in the prior case as if defendant had been in the CDCR's custody (i.e., as if defendant had been in the CDCR's constructive custody), he argues that his custody credits in the present case should have been calculated from September 16, 2008, to the date of sentencing (April 14, 2009);[5] he should have therefore been awarded 211 actual days, plus 31 days under section 2933.1, for a total of 242 days.

Defendant argues in the alternative that even if the court properly denied one-for-one credit in calculating his sentence in the prior case, the court nonetheless erred in

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[4] Defendant acknowledges that in order to present the issue for appeal, he was required under section 1237.1 to have first raised any challenge to the calculation of presentence custody credits in the trial court either at the time of sentencing, or, if he discovered the error later, by post-sentencing motion to correct the record. Although he apparently did not do either before filing the notice of appeal, he later filed a motion to correct custody credits in the trial court. That motion was denied on March 30, 2010.

[5] This conclusion is based upon (a) determining that his sentence in the prior case was for a period of 16 months from May 29, 2008, to September 29, 2009; (b) after subtracting the 271 days' credit awarded, the sentence would then have been completed on January 1, 2009; (c) this would have left 218 days to be served on the sentence; (d) given an assumed one-for-one credit under section 2933, this would have resulted in his being required to serve 109 actual days in the prior case; and (e) counting 109 days back from January 1, 2009, defendant would have completed his sentence on September 15, 2008.

concluding that he completed serving that sentence on December 3, 2008. He argues that, based upon a correct calculation, he completed serving his sentence in the prior case on October 22, 2008, and he should therefore have received presentencing credits in the present case of 174 actual days, plus 26 additional days for a total of 200 days.

We address these alternative contentions below.

B. *Claim Based on One-for-One Credits in Prior Case*

Defendant's central position is that upon his being sentenced to a 16-month prison term in the prior case, he was constructively in the custody of the CDCR and should have received postsentence credits as if he had been confined in prison from May 29, 2008. In support of this position, he relies on *People v. Buckhalter* (2001) 26 Cal.4th 20 (*Buckhalter*), and *People v. Johnson* (2004) 32 Cal.4th 260 (*Johnson*). Defendant also maintains that the manner in which his credits were calculated resulted in a denial of equal protection. Defendant's arguments ignore the distinction between the presentence credit scheme and the worktime credit scheme for prisoners, and are based upon authority that is inapposite. Further, we reject defendant's equal protection challenge.

In providing an "overview of the felony sentencing system, including the separate and independent credit schemes for presentence and postsentence custody" (*Buckhalter, supra*, 26 Cal.4th at p. 30), the Supreme Court has explained: "Everyone sentenced to prison for criminal conduct is entitled to credit against his term for all actual days of confinement solely attributable to the same conduct. (§§ 2900, subd. (c), 2900.1, 2900.5, subds. (a), (b); [citation].) Persons detained in a specified city or county facility, or under equivalent circumstances elsewhere . . . , 'prior to the imposition of sentence' may also be eligible for good behavior credits of up to two additional days for every four of actual custody. (§ 4019, subds. (a)(4), (b), (c), (e), (f).) One such additional day is awarded unless the detainee refused to satisfactorily perform assigned labor, and a second such additional day is awarded unless the detainee failed to comply with reasonable rules and regulations. (§ 4019, subds. (b), (c), (f).) '[T]he court imposing a sentence' has

responsibility to calculate the exact number of days the defendant has been in custody 'prior to sentencing,' add applicable good behavior credits earned pursuant to section 4019, and reflect the total in the abstract of judgment. (§ 2900.5, subd. (d); see also *id.*, subd. (a).) [¶] A judgment of imprisonment must direct that the defendant be delivered to the [CDCR] Director's custody at a designated state prison. (§ 1202a.) Upon receipt of a certified abstract of the judgment, the sheriff must deliver the defendant to prison authorities. (§ 1216.) Once so delivered, the defendant 'shall be imprisoned until duly released according to law.' (§ 2901.) Service of the sentence commences upon such delivery (§ 2900, subd. (a)), and time thereafter served in an institution designated by the [CDCR] Director 'shall be credited as service of the term of imprisonment' (*id.*, subd. (c)). The agency to which the defendant is committed, not the trial court, has the responsibility to calculate and apply any custody credits that have accrued between the imposition of sentence and physical delivery of the defendant to the agency. (§ 2900.5, subd. (e).)" (*Id.* at pp. 30-31, fn. omitted.)

This overview demonstrates the clear distinction between the presentence and postsentence custody credit schemes. As the high court has also explained, "[T]he pre and postsentence credit systems serve disparate goals and target persons who are not similarly situated. The presentence credit scheme, section 4019, focuses primarily on encouraging minimal cooperation and good behavior by persons temporarily detained in local custody before they are convicted, sentenced, and committed on felony charges. By contrast, the worktime credit scheme for persons serving prison terms emphasizes penological considerations, including the extent to which certain classes of prisoners, but not others, deserve or might benefit from incentives to shorten their terms through participation in rehabilitative work, education, and training programs operated by the Department of Corrections. [Citations.]" (*Buckhalter*, *supra*, 26 Cal.4th at pp. 36-37, fn. omitted.) As our high court further cautioned, "we must admonish at the outset that application of the complex statutory sentence-credit system to individual situations ' "is

likely to produce some incongruous results and arguable unfairness when compared to a theoretical state of perfect and equal justice. [Because] there is no simple or universal formula to solve all presentence credit issues, our aim [must be] to provide . . . a construction [of the statutory scheme] which is faithful to its language, which produces fair and reasonable results in a majority of cases, and which can be readily understood and applied by trial courts." ' [Citations.]" (*Id.* at pp. 28-29.)

Defendant's contention that he was in the constructive custody of the CDCR as of the date he was sentenced in the prior case (i.e., May 29, 2008) is belied by a plain reading of section 2900, subdivision (a), which provides that "[t]he term of imprisonment fixed by the judgment in a criminal action commences to run only upon the *actual delivery* of the defendant into the custody of the Director of Corrections at the place designated by the Director of Corrections as a place for the reception of persons convicted of felonies." (Italics added; see also *Buckhalter, supra*, 26 Cal.4th at p. 30: "Service of the [prison] sentence commences upon such delivery [of the defendant to prison authorities].") It is clear therefore that it is not the trial court's imposition of the prison sentence, but, rather, "delivery, the physical act of transporting the defendant to the state penal institution, [that] triggers the running of a prison sentence. After sentencing and before delivery, the defendant's custody is considered presentence time to be credited against the actual prison term." (*People v. Holdsworth* (1988) 199 Cal.App.3d 253, 258.) As has been further explained, "In effect, the defendant does not begin to accrue credits with the Department of Corrections in connection with his sentence until he is actually delivered into the department's custody. In the interim, credits are awarded by virtue of section 2900.5, subdivision (e) which provides: 'It shall be the duty of any agency to which a person is committed to apply the credit provided for in this section for the period *between* the date of sentencing and the date the person is delivered to such agency.' (Italics added.)" (*People v. Smith* (1989) 211 Cal.App.3d 523, 526, fn. omitted; cf. *People v. Sage* (1980) 26 Cal.3d 498, 505-506

[because term of imprisonment commences with the defendant's actual delivery to the Director's custody, "term" as used in section 2931, subd. (a), concerning CDCR's authority to reduce prisoner's term, "refers to time in prison subsequent to conviction"].)

Based upon the foregoing, we reject defendant's claim here that immediately upon having been sentenced in the prior case, he should have been deemed to have been in the custody of the prison authorities and should have accrued postsentencing custody credits on a one-for-one basis. Nor do we agree that the authorities cited by defendant (*Buckhalter*, *supra*, 26 Cal.4th 20 and *Johnson*, *supra*, 32 Cal.4th 260) suggest that his constructive custody argument has any merit.

In *Buckhalter*, *supra*, 26 Cal.4th at page 22, the defendant had been convicted of multiple felonies and sentenced under the "Three Strikes" law (§§ 667, 1170.12). After being sentenced in 1996, followed by the Court of Appeal's agreeing in part with the defendant and in part with the People and remanding the case solely for sentencing issues (*Buckhalter*, at pp. 24-25), and after the defendant was transported from prison to local custody for the further proceedings, the trial court in October 1998 addressed the further sentencing issues that were the subject of the remand order (*id.* at p. 26). The trial court, in calculating credits, refused to award additional time and good behavior credits for the period the defendant was confined in a local facility awaiting the remand hearing, concluding that he was still under the jurisdiction of the Department of Corrections during that period. (*Id.* at pp. 26-27.)

On appeal to the Supreme Court, the defendant argued that his credits, by virtue of the remand order, should have been calculated up to the time of the resentencing as having been entirely presentence custody, under which he would have received more favorable treatment than the credit system applicable to prisoners serving sentences under the "Three Strikes" law. (*Buckhalter*, *supra*, 26 Cal.4th at p. 28.) The high court rejected that position, relying, inter alia, on the plain distinction between, and differing policy considerations applicable to, the presentence and postsentence custody credit statutes,

holding that "a convicted felon who has once been sentenced, committed, and delivered to prison, who received all credits for confinement prior to the original sentencing, and who remains behind bars pending an appellate remand solely for correction of sentencing errors, is not eligible to earn additional credits for good behavior as a presentence detainee." (*Id.* at p. 29.) It reasoned that "an appellate remand solely for correction of a sentence already in progress does not remove a prisoner from the Director's custody or restore the prisoner to presentence status as contemplated by section 4019. . . . [A] defendant's temporary removal from state prison to county jail as a consequence of the remand did not transform him from a state prisoner to a local presentence detainee. When a state prisoner is temporarily away from prison to permit court appearances, he remains in the constructive custody of prison authorities and continues to earn sentence credit, if any, in that status. [Citations.]" (*Id.* at pp. 33-34.)

Buckhalter offers no support to defendant here. In contrast to the circumstances in *Buckhalter*, here, defendant was never transferred to the custody of the CDCR to begin serving the term of his sentence in the prior case, within the meaning of section 2900, subdivision (a). The *Buckhalter* defendant's constructive custodial status as a prisoner stemmed from the fact of his original delivery to the prison authorities after sentencing. No such delivery occurred here, and, by the terms of section 2900, defendant never commenced service of his prison term in the prior case.

Johnson, *supra*, 32 Cal.4th 260, similarly does not aid defendant. There, as was the case in *Buckhalter*, the defendant had been convicted, sentenced to a term (50 years to life) of imprisonment, and delivered into the custody of the Department of Corrections. (*Johnson*, at p. 264.) After such delivery, "the trial court ordered [the] defendant to be produced and returned to the sheriff's custody," and on the date of the rehearing, it recalled the sentence and resentenced the defendant. (*Ibid.*) The trial court refused to grant the defendant presentence conduct credit pursuant to section 4019 for the period during which the defendant was in local custody after the court's order that he be

returned from prison to the time of resentencing. (*Johnson*, at p. 264.) The Supreme Court rejected the defendant's contention that the recall of the sentence had the effect of voiding the initial sentence and that he should therefore be considered under the presentence custody credit scheme. (*Id.* at p. 265.) Likening the circumstances in *Johnson* to those in *Buckhalter*, the high court relied on its holding in *Buckhalter*, concluding: "The trial court here recalled the sentence solely for correction of a prison sentence already in progress and reimposed a state prison sentence at the recall hearing. As with an appellate remand solely for correction of a sentence already in progress, a recall of sentence does not remove a prisoner from the Director's custody or restore the prisoner to presentence status as contemplated by section 4019. [Citations.]" (*Johnson*, at p. 267.)

Johnson does not stand for the proposition that a defendant who is convicted and sentenced but is not delivered into the CDCR's custody is nonetheless serving his prison term while in local custody. In both *Johnson* and in *Buckhalter*, the defendant had been physically transferred to prison officials after initial sentencing and the term of each defendant had thus commenced within the meaning of section 2900, subdivision (a). Here, no such physical delivery took place, and the constructive custody argument he advances based upon the inapposite cases of *Johnson* and *Buckhalter* fails.

Defendant asserts further that the denial of postsentence custody credits for the period of his confinement after sentencing in the prior case constitutes a violation of his constitutional right to equal protection. He contends that he is similarly situated to a "defendant who is sentenced to a prison term, transported to prison, and then returned to local custody to face unrelated charges. The only difference between the two is the administrative convenience of retaining Mr. Hutchinson in county jail rather than transporting him to the state prison and then back to the county." Defendant asserts that there is no compelling state interest or even a rational basis for treating him "differently

from other state prisoners on out-of-court status." We reject defendant's equal protection challenge.

There are two elements to a successful equal protection challenge. The first prerequisite is " 'a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.' [Citations.]" (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1199 (*Hofsheier*), quoting *In re Eric J.* (1979) 25 Cal.3d 522, 530.) "Under the equal protection clause, we do not inquire 'whether persons are similarly situated for all purposes, but "whether they are similarly situated for purposes of the law challenged." ' [Citations.]" (*Hofsheier*, at pp. 1199-1200.) The second requirement of a successful equal protection claim is that the challenger, depending on whether the statute involves a suspect classification or touches upon fundamental interests, must show that the classification is not justified by a compelling state interest, or, in most instances, that the classification bears no rational relationship to a legitimate state purpose. (*Hofsheier*, at p. 1200.)

Defendant cannot satisfy the "similarly situated" prong required for an equal protection claim. His contention that he is similarly situated with convicted felons who have been sentenced, delivered to prison, and later returned for confinement in a local facility to stand trial on unrelated charges, is based upon a faulty premise: namely, that had he been delivered to the CDCR's custody, he would have earned the postsentence one-for-one credits of which he claims to have been deprived. This premise is speculative, because it cannot be known in advance of any convicted felon's delivery to prison authorities and service of the sentence that he or she will in fact earn all postsentence credits potentially available by statute.

It is the Legislature's intent that all convicted felons serve their entire court-imposed prison sentence (§ 2933, subd. (a)), and any statutory postsentence credit afforded prisoners serving their sentences "is a privilege, not a right. Credit must be earned and may be forfeited pursuant to the provisions of Section 2932." (§ 2933, subd.

(c); see *People v. Goodloe* (1995) 37 Cal.App.4th 485, 489 [postsentence worktime credit "is not awarded automatically"].) As explained by the high court, "Once a person begins serving his prison sentence, he is governed by an entirely distinct and exclusive scheme for earning credits to shorten the period of incarceration. Such credits can be earned, *if at all*, only for time served 'in the custody of the Director' [citation] . . . . Such prison worktime credits, *once earned, may be forfeited* for prison disciplinary violations and, in some cases, restored after a period of good behavior. [Citations.] Accrual, forfeiture, and restoration of prison worktime credits are pursuant to procedures established and administered by the Director. (§§ 2932, subd. (c), 2933, subd. (c).)" (*Buckhalter, supra*, 26 Cal.4th at p. 31, italics added.) Thus, since defendant's argument is based upon the speculative premise that he would have automatically received postsentence worktime credits had he been delivered to the prison authorities after being sentenced in the prior case, his equal protection claim necessarily fails.

Further, defendant—as a convicted felon sentenced in the prior case and then almost immediately charged with six felonies and awaiting trial while incarcerated in the local jail—was not similarly situated with other convicted felons who were sentenced and delivered to the CDCR's custody. As observed by the court in *Buckhalter*, "the pre and postsentence credit systems serve disparate goals and target persons who are not similarly situated." (*Buckhalter, supra*, 26 Cal.4th at p. 36; see also *In re Martinez* (2003) 30 Cal.4th 29, 36 ["pretrial detainee is not similarly situated to a state prison inmate"].)

Equal protection arguments similar to defendant's here in which felony detainees have been grouped with convicted prison inmates have been rejected in the past by numerous courts. For instance, in *People v. Heard* (1993) 18 Cal.App.4th 1025, 1028 (*Heard*), the defendant argued that the denial of postsentence credits on a one-for-one basis to presentence detainees violated equal protection because it treated such detainees differently than prisoners who post bail and who subsequently receive one-for-one credits in serving their sentences. The court rejected the challenge: "[W]e conclude that the

slightly less favorable section 4019 two-for-four credit formula does not constitute a denial of equal protection. [Citation.] Pretrial felony detainees and state prison inmates are not similarly situated with respect to the purposes of the custody credit statutes. While state prison inmates are conclusively guilty and presumptively in need of rehabilitation, pretrial felony detainees are presumptively innocent and may not require rehabilitation. [Citations.] The difficulty of establishing prison-style work programs in county jails for pretrial detainees—who may make bail, or have work programs interrupted by court appearances and other obligations—further distinguishes pretrial detainees from state prisoners and justifies the slightly disparate scheme for awarding conduct credit to the former class. [Citation.] We find no invidious classification or equal protection violation in the calculation of appellant's conduct credits under section 4019. [Citation.]" (*Id.* at pp. 1030-1031.)

A number of other courts have rejected similar equal protection challenges. (See, e.g., *People v. Ross* (1985) 165 Cal.App.3d 368, 377 [regulations concerning availability of credits to prison inmates "only apply to persons who have actually commenced serving a state prison term"]; *People v. Caruso* (1984) 161 Cal.App.3d 13, 20, fn. omitted ["limited availability of section 2933 credits to postsentence imprisonment is constitutionally valid"]; *People v. Caddick* (1984) 160 Cal.App.3d 46, 53 [detainees and prison inmates "are not similarly situated with respect to the purposes of section 2933 to rehabilitate prisoners and achieve prison self-sufficiency"].) Given the difficulties of adopting work programs for persons detained in local facilities that would be similar to those already in existence for state prisons (*Heard, supra,* 18 Cal.App.4th at pp. 1030-1031)—which difficulties would extend to persons convicted of felonies and sentenced to prison but who were incarcerated in local facilities and had not commenced serving their sentences—defendant cannot be deemed to be similarly situated to those convicted felons who have been sentenced and have commenced serving their prison terms.

Defendant has not shown that he is similarly situated with another group of people (i.e., convicted felons who have been sentenced and have started serving their prison terms) and that he has been treated unequally by comparison with that other group. His challenge therefore fails because he has not satisfied the first equal protection prerequisite stated above. (*In re Cleaver* (1984) 158 Cal.App.3d 770, 773 [equal protection challenge fails where the defendant does not satisfy threshold requirement of state classification of two or more similarly situated groups receiving unequal treatment].)

C. *Date Determined as Completion of Sentence in Prior Case*

Having disposed of defendant's primary challenge, we briefly address defendant's alternative contention that the court calculated the custody credits in this case by erroneously finding that defendant completed serving his sentence in the prior case on December 3, 2008, rather than on October 22, 2008.

The court's determination here apparently consisted of simply adopting the report of the probation officer. In that report, the officer noted: "According to [a representative of the CDCR], defendants are entitled to receive one[-]third good time post sentencing credits for time spent in local custody so long as it was not a re-sentencing. As such, the defendant's release date for [the prior case] was calculated as being December 3, 2008. Custody credits for the present matter were calculated beginning on December 4, 2008." There is no further information in the record that sheds light on how the court (or the probation officer) arrived at December 3, 2008, as the date defendant completed his sentence in the prior case.

Defendant's claim that the court erred in fixing December 3, 2008, as the completion date of the sentence in the prior case appears to have merit. As we have held, *ante*, defendant is not entitled to one-for-one postsentence credits because he never commenced the service of his prison term, since he was not delivered into the custody of the CDCR as required under section 2900, subdivision (a). He was nonetheless entitled to credit against the sentence in the prior case for his local confinement after May 29,

2008. (See § 4019, subd. (a)(1).)[6] Assuming that defendant was entitled to receive all custody credits available under section 4019 (as then in effect)[7] in the prior case based upon his postsentence confinement in the county jail, it appears that defendant may have completed his sentence in the prior case on October 21, 2008, rather than on December 3, 2008, as determined by the court.[8]

Because of the scant record concerning the rationale the court used in determining the date defendant completed serving the sentence in the prior case, and because it is generally advisable that the trial court, rather than the appellate court, correct any clerical errors, such as the miscalculation of credits (*People v. Fares* (1993) 16 Cal.App.4th 954, 959), we remand the matter to the trial court to redetermine the custody credits to which defendant is entitled in this case after reviewing and establishing the date upon which defendant completed serving his sentence in the prior case.

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[6] "The provisions of this section shall apply in all of the following cases: [¶] (1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest *to the date on which the serving of the sentence commences*, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding." (§ 4019, subd. (a)(1), italics added.)

[7] Section 4019 was amended, effective January 25, 2010. (Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Defendant, who was sentenced on April 14, 2009, does not argue that the amendment to section 4019 should be applied to his sentencing in this case. We therefore do not address that issue.

[8] Under former section 4019 (see fn. 7, *ante*), "presentence conduct credit is calculated 'by dividing the number of days spent in custody by four and rounding down to the nearest whole number. This number is then multiplied by two and the total added to the original number of days spent in custody. [Citation.]' [Citation.]" (*People v. Williams* (2000) 79 Cal.App.4th 1157, 1176, fn. 14.) Therefore, under this formula, assuming that defendant was entitled to all section 4019 credits during the time he was confined at county jail, and after the deduction of the 271 days' credit from his 16-month sentence in the prior case, it would appear that defendant's sentence in the prior case would have been completed on October 21, 2008.

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court for the limited purpose of recalculating presentence custody credits in the present case after redetermining (consistently with this opinion) the date upon which defendant completed serving his sentence in the prior case (Docket No. CC649420).

Duffy, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.